IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC. App. No. 723/2006

Judgment delivered on: September 26, 2007

M/s. New India Assurance Co. Ltd. ..... Appellant
Through: Mr. D.K. Sharma, Adv.

versus

Rekha Pandey & Ors. ..... Respondent
Through: Mr. Arvind Sharma, Adv. for respondents 1-4.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR,

1. Whether the Reporters of local papers may be allowed to see the judgment? No
2. To be referred to Reporter or not? No
3. Whether the judgment should be reported in the Digest? No

KAILASH GAMBHIR, J. Oral:

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By way of the present appeal, the appellant has sought to challenge the quantum of compensation awarded by the Tribunal in favour of the respondents/claimants.

At the very outset, the counsel for the respondents has raised a preliminary objection about the maintainability of the present appeal. The contention of the counsel for respondent is

that the appellant being insurer cannot travel beyond the defence available to the insurer under Section 49(2) of the Motor Vehicles Act. The counsel contends that it is the settled position of law that the negligence of the quantum cannot be challenged by the insurer. Counsel for the respondent has placed reliance on the judgment of the Supreme Court reported as 2002 ACJ 1250 ***National Insurance Company Ltd vs. Nicolletta Rohtagi & Ors.***

I have heard learned counsel for the parties. I find subtance in the submissions of the learned counsel for the respondent. It is no more res integra that the insurer can avoid its liability only within the four corners of statutory defence available to it under Section 149(2) of the Motor Vehicles Act. The insurer is entitled to defend the action and contest the claim on grounds enumerated in the Sub Section 2 of Section 149 of the Motor Vehicles Act. Permitting the insurer to contest the claim on grounds other than provided in Section 149(2) of the Motor Vehicles Act would mean adding more grounds of contest to the insurer, then, what the statute has provided in quite explicit terms. It would be relevant to refer para 11 of the said judgment as under:-

> "11. Subsequently in 1934, second Road Traffic Act was enacted. The object of the said legislation was to satisfy the liability of the

> insured. Under the said enactment three actions were provided. The first was to satisfy the award passed against the insured. The second was that, in case the insurer did not discharge its liability the claimant had right to execute decree against the insurer. However, in certain events, namely, what was provided in section 96 (2)(a) which corresponds to section 149 (2) (a) of 1988 Act, the insurer could defend his liability. The third action provided for was contained in section 10(3) of the Toad Traffic Act. Under the said provision, the insurer could defend his liability to satisfy decree on the ground that insurance policy was obtained due to misrepresentation or fraud. The said provision also finds place in section 149 (2)(b) of 1988 Act. While enacting the 1939 Act and 1988 Act, all the three actions have been engrafted in section 96 of 1939 Act and section 149 of 1988 Act. It may be remembered that neither the 1939 Act nor the 1988 Act conferred greater rights to the insurer than what had been conferred in English law. Thus, in common law, an insurer was not permitted to contest a claim of a claimant on merits, i.e., offending vehicle was not negligent or there was contributory negligence. The insurer could contest the claim only on statutory defences specified for in the statute."

In the light of the aforesaid discussion, I do not find any merit in the appeal and the same is accordingly dismissed.

September 26, 2007 **KAILASH GAMBHIR, J.**
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